

PROSKAUER ROSE LLP

Michael T. Mervis
Timothy Q. Karcher
Eleven Times Square
New York, NY 10036-8299
Tel.: (212) 969-3000

Attorneys for Defendants-Appellants

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

TRANSCARE CORPORATION, et al.,

Debtors.

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Chapter 7
Case No. 16-10407 (SMB)
(Jointly Administered)

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SALVATORE LAMONICA, as Chapter 7
Trustee for the Estates of TransCare
Corporation, et al.,

Plaintiff,

- against -

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Adv. Proc. No. 18-1021 (SMB)

LYNN TILTON, PATRIARCH PARTNERS
AGENCY SERVICES, LLC, PATRIARCH
PARTNERS, LLC, PATRIARCH PARTNERS
MANAGEMENT GROUP, LLC, ARK II CLO
2001-1 LIMITED, TRANSCENDENCE
TRANSIT, INC., and TRANSCENDENCE
TRANSIT II, INC.,

Defendants.

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**DEFENDANTS-APPELLANTS' STATEMENT OF ISSUES TO BE PRESENTED ON
APPEAL, DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON
APPEAL, AND CERTIFICATE REGARDING TRANSCRIPTS PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 8009**

Patriarch Partners Agency Services, LLC (“PPAS”), Transcendence Transit, Inc., Transcendence Transit II, Inc. (together with Transcendence Transit Inc., “Transcendence”), and Ark II CLO 2001-1 Limited (“Ark II” and, collectively with PPAS and Transcendence, “Defendants-Appellants”) hereby submit, pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1 of the Local Bankruptcy Rules for the Southern District of New York, this (i) statement of issues to be presented on appeal, (ii) designation of items to be included in the record on appeal, and (iii) certificate regarding transcripts, in connection with Defendants-Appellants’ appeal in the above-captioned adversary proceeding (Notice of Appeal filed at Dkt. No. 146) from the judgment dated July 15, 2020 [Dkt. No. 141] and entered on the docket of the United States Bankruptcy Court for the Southern District of New York on July 15, 2020 (the “Judgment”).

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL¹

1. With respect to Count 7 of the Amended Complaint² filed by the Chapter 7 Trustee (“Plaintiff-Appellee”):

- a. Did the Bankruptcy Court err in ruling that: (i) Plaintiff-Appellee sustained his burden of proving that TransCare transferred the Subject Collateral to PPAS with the intent to hinder and delay TransCare’s creditors, and (ii) the transfer should be avoided, under NYDCL § 276 and 11 U.S.C. § 548(a)(1)(A) (*see* PFC at 76)?
- b. Did the Bankruptcy Court err in disallowing PPAS’s claim under 11 U.S.C. § 502(d) (*see* Judgment, ¶ 2; PFC at 79)?

¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the *Post-Trial Findings of Fact and Conclusions of Law* of the United States Bankruptcy Court for the Southern District of New York, dated July 6, 2020 [Dkt. No. 138] (“PFC”).

² *Amended Complaint against Lynn Tilton, et al.*, Adv. Proc. No. 18-1021-smb, Dkt. No. 53.

- c. Did the Bankruptcy Court err in awarding Plaintiff-Appellee \$39.2 million in damages, or damages in any amount at all, as against: (i) PPAS, pursuant to 11 U.S.C. § 550(a), and (ii) Transcendence as the alleged immediate transferee of PPAS, pursuant to 11 U.S.C. § 550(a)(2) (*see* Judgment, ¶ 1; PFC at 79)?
- d. Did the Bankruptcy Court err in determining that Plaintiff-Appellee is entitled to an award of attorneys' fees pursuant to NYDCL § 276-a (*see* Judgment, at 2; PFC at 79-80)?

2. With respect to Count 10 of Plaintiff-Appellee's Amended Complaint, did the Bankruptcy Court err in avoiding the lien granted to Ark II under the Ark II Security Agreement as a preference and preserving the lien for the benefit of the above-captioned debtors' estates, pursuant to 11 U.S.C. § 551 (*see* Judgment ¶ 3; PFC at 86)?

3. With respect to Count 11 of Plaintiff-Appellee's Amended Complaint, did the Bankruptcy Court err in avoiding the lien granted to Ark II under the Ark II Security Agreement as a constructive fraudulent transfer and preserving the lien for the benefit of the above-captioned debtors' estates, pursuant to 11 U.S.C. § 551 (*see* Judgment ¶ 3; PFC at 88)?

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Defendants-Appellants designate the following items to be included in the record on appeal. The below designations include all documents referenced by the particular document number, including, without limitation, all exhibits and attachments thereto. Defendants-Appellants reserve the right to designate additional items for inclusion in the record.

1. Designated Entries from the Docket of *LaMonica v. Tilton, et al.*, Adv. Proc. No. 18-1021-smb

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|---|
| 1. | 02/22/2018 | 1 | Adversary case 18-01021. Complaint against Lynn Tilton, Patriarch Partners Agency Services, LLC, Patriarch Partners, LLC, Patriarch Partners Management Group, LLC, Ark II CLO 2001-1, Limited, ARK Investment Partners II, L.P., LD Investments, LLC, Patriarch Partners II, LLC, Patriarch Partners III, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC, Transcendence Transit, Inc., Transcendence Transit II, Inc. Complaint of Salvatore LaMonica, as Chapter 7 Trustee of the Jointly-Administered Estates of TransCare Corporation, et al. against Lynn Tilton, Patriarch Partners Agency Services, LLC, Patriarch Partners, LLC, Patriarch Partners Management Group, LLC, Ark II CLO 2001-1, Limited, Ark Investment Partners II, L.P., LD Investments, LLC, Patriarch Partners II, LLC, Patriarch Partners III, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC, Transcendence Transit, Inc., and Transcendence Transit II, Inc. (Fee Amount \$ 350.). Nature(s) of Suit: (81 (Subordination of claim or interest)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))), (21 (Validity, priority or extent of lien or other interest in property)), (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) Filed by Steven G. Storch on behalf of SALVATORE LAMONICA. (Storch, Steven) (Entered: 02/22/2018) |
| 2. | 11/28/2018 | 53 | Amended Complaint against Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. Amended Complaint of Salvatore LaMonica, as Chapter 7 Trustee of the Jointly-Administered Estates of TransCare Corporation, et al. against Lynn Tilton, Patriarch Partners Agency Services, LLC, Patriarch Partners, LLC, Patriarch Partners Management Group, LLC, Ark II CLO 2001-1, Limited, Transcendence Transit, Inc., and Transcendence Transit II, Inc. Filed by Bijan Amini on behalf of SALVATORE LAMONICA. (Amini, Bijan) (Entered: 11/28/2018) |

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|---|
| 3. | 05/14/2019 | 85 | So Ordered Stipulation Signed On 5/14/2019. Re: Joint Pretrial Order TRIAL with hearing to be held on 7/22/2019 at 10:00 AM at Courtroom 723 (SMB) (Barrett, Chantel) (Entered: 05/14/2019) |
| 4. | 07/08/2019 | 102 | Motion to Approve / Notice of Defendants' Motion in Limine to Exclude Certain Irrelevant Documents and Testimony Related to Credit Suisse filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. with hearing to be held on 7/22/2019 at 10:00 AM at Courtroom 723 (SMB) Responses due by 7/15/2019. (Mervis, Michael) (Entered: 07/08/2019) |
| 5. | 07/08/2019 | 103 | Memorandum of Law / Defendants' Memorandum of Law in Support of Their Motion in Limine to Exclude Certain Irrelevant Documents and Testimony Related to Credit Suisse (related document(s)102) filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. (Mervis, Michael) (Entered: 07/08/2019) |
| 6. | 07/08/2019 | 104 | Declaration of Michael T. Mervis in Support of Defendants' Motion in Limine to Exclude Certain Irrelevant Documents and Testimony Related to Credit Suisse (related document(s) 102) filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc.. (Attachments: # 1 Ex. 1 # 2 Ex. 2 # 3 Ex. 3 # 4 Ex. 4 # 5 Ex. 5 # 6 Ex. 6 # 7 Ex. 7 # 8 Ex. 8 # 9 Ex. 9 # 10 Ex. 10 # 11 Ex. 11 # 12 Ex. 12 # 13 Ex. 13 # 14 Ex. 14 # 15 Ex. 15 # 16 Ex. 16 # 17 Ex. 17 # 18 Ex. 18) (Mervis, Michael) (Entered: 07/08/2019) |
| 7. | 07/08/2019 | 105 | Motion to Approve / Notice of Defendants' Motion in Limine to Exclude the Testimony of Plaintiff's Purported Expert Jonathan I. Arnold filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, |

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|--|
| | | | Transcendence Transit II, Inc., Transcendence Transit, Inc. with hearing to be held on 7/22/2019 at 10:00 AM at Courtroom 723 (SMB) Responses due by 7/15/2019. (Mervis, Michael) (Entered: 07/08/2019) |
| 8. | 07/08/2019 | 106 | Memorandum of Law / Memorandum in Support of Defendants' Motion in Limine to Exclude the Testimony of Plaintiff's Purported Expert Jonathan I. Arnold (related document(s)105) filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. (Mervis, Michael) (Entered: 07/08/2019) |
| 9. | 07/08/2019 | 107 | Declaration of Michael T. Mervis in Support of Defendants' Motion in Limine to Exclude the Testimony of Plaintiff's Purported Expert Jonathan I. Arnold (related document(s)105) filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. (Attachments: # 1 Ex. 1 # 2 Ex. 2 # 3 Ex. 3 # 4 Ex. 4 # 5 Ex. 5 # 6 Ex. 6 # 7 Ex. 7 # 8 Ex. 8 # 9 Ex. 9 # 10 Ex. 10 # 11 Ex. 11 # 12 Ex. 12 # 13 Ex. 13 # 14 Ex. 14 # 15 Ex. 15 # 16 Ex. 16 # 17 Ex. 17) (Mervis, Michael) (Entered: 07/08/2019) |
| 10. | 07/19/2019 | 116 | Statement / Defendants' Opening Statement filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. (Mervis, Michael) (Entered: 07/19/2019) |
| 11. | 07/30/2019 | 119 | Transcript regarding Hearing Held on 07/22/19 at 10:04 A.M. RE: Trial A.M. Session. Remote electronic access to the transcript is restricted until 10/28/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/5/2019. Statement of Redaction Request Due By 8/19/2019. Redacted Transcript Submission Due By 8/29/2019. Transcript |

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|--|
| | | | access will be restricted through 10/28/2019. (Su, Kevin) (Entered: 07/30/2019) |
| 12. | 07/30/2019 | 120 | Transcript regarding Hearing Held on 07/22/19 at 2:01 P.M. RE: Trial P.M. Session. Remote electronic access to the transcript is restricted until 10/28/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/5/2019. Statement of Redaction Request Due By 8/19/2019. Redacted Transcript Submission Due By 8/29/2019. Transcript access will be restricted through 10/28/2019. (Su, Kevin) (Entered: 07/30/2019) |
| 13. | 07/30/2019 | 121 | Transcript regarding Hearing Held on 07/23/19 at 10:09 A.M. RE: Trial A.M. Session. Remote electronic access to the transcript is restricted until 10/28/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/5/2019. Statement of Redaction Request Due By 8/19/2019. Redacted Transcript Submission Due By 8/29/2019. Transcript access will be restricted through 10/28/2019. (Su, Kevin) (Entered: 07/30/2019) |
| 14. | 07/31/2019 | 122 | Transcript regarding Hearing Held on 07/24/19 at 10:03 A.M. RE: Trial. Remote electronic access to the transcript is restricted until 10/29/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/7/2019. Statement of Redaction Request Due By 8/21/2019. Redacted Transcript Submission Due By 9/3/2019. Transcript access will be restricted through 10/29/2019. (Su, Kevin) (Entered: 07/31/2019) |
| 15. | 09/03/2019 | 125 | Transcript regarding Hearing Held on 08/08/19 at 2:10 P.M. RE: Trial (Continued). Remote electronic access to the transcript is restricted until 11/12/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the |

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|--|
| | | | Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/21/2019. Statement of Redaction Request Due By 9/4/2019. Redacted Transcript Submission Due By 9/16/2019. Transcript access will be restricted through 11/12/2019. (Su, Kevin) (Entered: 09/03/2019) |
| 16. | 09/03/2019 | 126 | Transcript regarding Hearing Held on 08/13/19 at 10:19 A.M. RE: Trial A.M. Session. Remote electronic access to the transcript is restricted until 11/12/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/21/2019. Statement of Redaction Request Due By 9/4/2019. Redacted Transcript Submission Due By 9/16/2019. Transcript access will be restricted through 11/12/2019. (Su, Kevin) (Entered: 09/03/2019) |
| 17. | 09/03/2019 | 127 | Transcript regarding Hearing Held on 08/13/19 at 1:47 P.M. RE: Trial P.M. Session. Remote electronic access to the transcript is restricted until 11/18/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/27/2019. Statement of Redaction Request Due By 9/10/2019. Redacted Transcript Submission Due By 9/20/2019. Transcript access will be restricted through 11/18/2019. (Su, Kevin) (Entered: 09/03/2019) |
| 18. | 09/03/2019 | 128 | Transcript regarding Hearing Held on 08/14/19 at 10:33 A.M. RE: TRIAL (Continued). Remote electronic access to the transcript is restricted until 11/18/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/27/2019. Statement of Redaction Request Due By 9/10/2019. Redacted Transcript Submission Due By 9/20/2019. Transcript access will be restricted through 11/18/2019. (Su, Kevin) (Entered: 09/03/2019) |
| 19. | 09/03/2019 | 129 | Transcript regarding Hearing Held on 08/14/19 at 2:01 P.M. RE: Trial (Continued). Remote electronic access to |

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|---|
| | | | the transcript is restricted until 11/18/2019. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Reliable.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 8/27/2019. Statement of Redaction Request Due By 9/10/2019. Redacted Transcript Submission Due By 9/20/2019. Transcript access will be restricted through 11/18/2019. (Su, Kevin) (Entered: 09/03/2019) |
| 20. | 09/09/2019 | 131 | Memorandum Endorsed Order Signed On 9/9/2019. (Barrett, Chantel) (Entered: 09/09/2019) |
| 21. | 09/18/2019 | 133 | Findings of Fact and Conclusions of Law / Defendants' Post-Trial Proposed Findings of Fact and Conclusions of Law Filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc.. (Mervis, Michael) (Entered: 09/18/2019) |
| 22. | 09/18/2019 | 134 | Findings of Fact and Conclusions of Law Plaintiffs Proposed Findings of Fact and Conclusions of Law Filed by Bijan Amini on behalf of SALVATORE LAMONICA. (Amini, Bijan) (Entered: 09/18/2019) |
| 23. | 10/11/2019 | 136 | Response to Defendants' Proposed Findings of Fact and Conclusions of Law (Dkt. 133) filed by Bijan Amini on behalf of SALVATORE LAMONICA. (Amini, Bijan) (Entered: 10/11/2019) |
| 24. | 10/11/2019 | 137 | Response / Defendants' Response to Trustee's Post-Trial Proposed Findings of Fact and Conclusions of Law (related document(s)134) filed by Michael T. Mervis on behalf of Ark II CLO 2001-1, Limited, Patriarch Partners Agency Services, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc. (Attachments: # 1 Ex. A) (Mervis, Michael) (Entered: 10/11/2019) |
| 25. | 07/06/2020 | 138 | Post-Trial Findings Of Fact And Conclusions Of Law Signed On 7/6/2020. (related document(s)136, 133) (Barrett, Chantel) (Entered: 07/06/2020) |
| 26. | 07/15/2020 | 141 | Judgment signed on 7/15/2020. Judgment is entered in favor of Plaintiff, Salvatore LaMonica, against Defendants, Patriarch Partners Agency Services, LLC, Transcendence Transit, Inc. and Transcendence Transit |

| Designation No. | Date | ECF No. | Docket Text |
|-----------------|------------|---------|---|
| | | | II, Inc., jointly and severally, for a total judgment in the amount of \$45,225,523.29, plus post-judgment interest. JUDGMENT INDEX NUMBER BC 20,0023 (related document(s)139) (Rouzeau, Anatin) (Entered: 07/15/2020) |
| 27. | 07/27/2020 | 146 | Notice of Appeal filed by Michael T. Mervis on behalf of ARK Investment Partners II, L.P., Ark II CLO 2001-1, Limited, LD Investments, LLC, Patriarch Partners Agency Services, LLC, Patriarch Partners II, LLC, Patriarch Partners III, LLC, Patriarch Partners Management Group, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC, Patriarch Partners, LLC, Lynn Tilton, Transcendence Transit II, Inc., Transcendence Transit, Inc.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Civil Cover Sheet)(Mervis, Michael) (Entered: 07/27/2020) |

2. Designated Entries from the Docket of *In re TransCare Corp.*, Case No. 16–10407-smb

| Designation No. | Date | ECF No. | Docket Text |
|-----------------|------------|---------|--|
| 28. | 03/25/2016 | 51 | Order Signed On 3/24/2016 Re: Pursuant To 11 U.S.C. §§ 105(A) And 721, Authorizing The Chapter 7 Trustee To Operate The Debtors Businesses And Pay Certain Operating Expenses Of These Estates (Related Doc # 7). (Greene, Chantel) (Entered: 03/25/2016) |
| 29. | 03/25/2016 | 52 | Order signed on 3/25/2016 Granting (I) Approving the Stipulation Respecting the Sale of Certain Personal Property; (II) Authorizing the Public Auction Sales of Certain Personal Property (II) Approving the Sale and Notice of Terms for the Public Auction Sales of certain Personal Property; (IV) Approving the Sale of certain Personal Property, Free and Clear of All Liens, Claims and Encumbrances, Security Interests and Other Interests to the Successful Bidders at the Public Auction Sales; (V) Approving the Employment of Maltz Auctions, Inc. as Auctioneer to Market and Publicly Auction certain Personal Property;(VI) Authorizing the Trustee to Donate or Otherwise Dispose of certain De Minimus Personal Property; and (VII) Granting Related |

| Designation No. | Date | ECF No. | Docket Text |
|------------------------|-------------|----------------|---|
| | | | Relief (Related Doc # 37). (Ho, Amanda) (Entered: 03/25/2016) |
| 30. | 08/23/2016 | 257 | Auctioneer's Report of Sale for the Auction Sales Conducted on April 20, May 4, May 6, May 11 and May 12, 2016 Filed by Holly R. Holecek on behalf of Maltz Auctions, Inc. (Holecek, Holly) (Entered: 08/23/2016) |
| 31. | 08/23/2016 | 258 | Auctioneer's Report of Sale for the Auction Sale Conducted on June 21, 2016 Filed by Holly R. Holecek on behalf of Maltz Auctions, Inc. (Holecek, Holly) (Entered: 08/23/2016) |

3. Designated Exhibits Admitted at Trial³

| Designation No. | Document Date | Trial Exhibit No. | Description |
|-----------------------------------|----------------------|--------------------------|---|
| Joint Exhibits⁴ | | | |
| 32. | 08/4/2003 | JX_1 | PPAS Credit Agreement |
| 33. | 10/13/2006 | JX_2 | Wells Fargo Loan and Security Agreement |
| 34. | 10/13/2006 | JX_3 | Wells Fargo 2006 Intercreditor Agreement |
| 35. | 01/26/2015 | JX_8 | Email from Tilton to Leland - RE: TransCare Weekly Report - Supplemental |
| 36. | 02/04/2015 | JX_10 | Email from Pelissier to Tilton - Transcare :: Escalated situation & corrective proposal |
| 37. | 02/06/2015 | JX_12 | Email from Leland to Pelissier, Schneider, Bonilla, Berlin, and Stephen - Re: New alternative to consider |
| 38. | 02/10/2015 | JX_15 | Email from Leland to Tilton |
| 39. | 03/07/2015 | JX_29 | Email from Leland to Tilton - Re: TransCare highlights March 1 to 7, 2015 |
| 40. | 07/3/2015 | JX_33 | Email from Greenberg to Tilton |
| 41. | 07/10/2015 | JX_40 | Email from Leland to Pelissier, Greenberg, and Whalen - Fwd: LOI for Transcare Transit |

³ The designated exhibits admitted at trial are annexed hereto in Appendix Volumes 1–3. Certain trial exhibits or attachments thereto were originally produced by the parties in native format. Native files will be provided directly to the bankruptcy clerk and/or the District Court.

⁴ Joint exhibits admitted at trial and designated by Defendants-Appellants are annexed hereto in Appendix Volume 1 (Parts 1–7).

| Designation No. | Document Date | Trial Exhibit No. | Description |
|------------------------|----------------------|--------------------------|--|
| 42. | 07/17/2015 | JX_44 | Email from Tilton to Leland - RE: Thank you! |
| 43. | 08/10/2015 | JX_45 | Email from Leland to Pelissier, Greenberg, Jones, Stephen, and Pothin - TransCare Weekly update 8/9 |
| 44. | 08/20/2015 | JX_46 | Email from Pelissier to Bonilla, Leland, and Greenberg - Fw: TransCare |
| 45. | 11/21/2015 | JX_52 | Email from Leland to "Lynn.Tilton@PatriarchPartners.com" - TransCare weekly update |
| 46. | 12/13/2015 | JX_53 | Email from Pelissier to Tilton - RE: TransCare – Yesterday's call with Wells Fargo |
| 47. | 12/18/2015 | JX_55 | Email from Greenberg to Tilton - TransCare - ambulance transactions overview with native attachment slip sheet |
| 48. | 12/23/2015 | JX_59 | Email from Provost to Greenberg and Pelissier - Longer Term Discussion Summary |
| 49. | 12/24/2015 | JX_60 | Email from Husson to Greenberg and Provost - RE: Transcare- Longer Term Discussion Summary |
| 50. | 12/24/2015 | JX_61 | Email from Greenberg to Tilton - Transcare - ambulance transactions overview (follow up with additional investment bankers) with Native attachment |
| 51. | 12/30/2015 | JX_64 | Email from Husson to Greenberg and Provost- LOI and APA requirements |
| 52. | 12/31/2015 | JX_65 | Email from Husson to Greenberg and Provost - RE: Transcare- Timetable |
| 53. | 01/05/2016 | JX_67 | Email from Michael Greenberg to Lynn Tilton - TransCare - updates to 2016 preliminary plan based on yesterday's discussion |
| 54. | 02/10/2016 | JX_77 | Chapter 11 Curtis Mallet Engagement Agreement |
| 55. | 02/11/2016 | JX_79 | Email from Stephen to Buenger - Additional Documents |
| 56. | 02/12/2016 | JX_80 | Email from Tilton to Whalen |
| 57. | 02/15/2016 | JX_82 | Email from Tilton to Giglio - RE: Transcare- Revised Budget |
| 58. | 02/17/2016 | JX_83 | Email from Tilton to Strack - Got your messages |
| 59. | 02/17/2016 | JX_84 | Email from Tilton to Strack - RE: Wells Fargo/Transcare- Financing Discussion Points |
| 60. | 02/17/2016 | JX_86 | Email from Tilton to "robert.strack@wellsfargo.com" |
| 61. | 02/19/2016 | JX_87 | Email from Tilton to Harrison - RE: Transcare |

| Designation No. | Document Date | Trial Exhibit No. | Description |
|---|----------------------|--------------------------|--|
| 62. | 02/19/2016 | JX_88 | Email from Tilton to Landeck and Giglio - RE: Borrowing Base |
| 63. | 02/23/2016 | JX_93 | Email from Tilton to Helfat and Giglio |
| 64. | 02/23/2016 | JX_94 | Email from Tilton to Giglio - RE: TransCare |
| 65. | 02/23/2016 | JX_95 | Email from Stephen to Giglio and Harrison |
| 66. | 02/24/2016 | JX_96 | Email from Stephen to Wolf - Please see attached with attachments |
| 67. | 02/24/2016 | JX_97 | Email from Tilton to Giglio - RE: Board Meeting |
| 68. | 02/24/2016 | JX_99 | Email from Tilton to Giglio and Harrison - FW: Transcare borrowings |
| 69. | 02/24/2016 | JX_101 | Email from Greenberg to Youngblood - FW: TT Borrowing Certificate and Credit Agreement with attachment Credit Agreement among Transcendence Transit and PPAS |
| 70. | 02/24/2016 | JX_102 | “Bill of Sale, Agreement to Pay and Transfer Statement” between PPAS and Transcendence Transit, Inc. |
| 71. | 10/9/2017 | JX_110 | PPAS Proof of Claim |
| Defendants’ Exhibits⁵ | | | |
| 72. | 08/4/2003 | DX_3 | Security Agreement (PPAS Credit Agreement) |
| 73. | 02/19/2015 | DX_19 | Email from Tilton to “kurt.marsden@wellsfargo.com” - Re: Transcare |
| 74. | 02/26/2015 | DX_26 | Amendment No. 24 to Credit Agreement of TransCare Corporation |
| 75. | 07/16/2015 | DX_64 | Email from Tilton to Whalen and Greenberg - RE: TransCare - Availability Block (good news) |
| 76. | 10/1/2015 | DX_72 | Email from Tilton to Jones - RE: TransCare CFO |
| 77. | 10/14/2015 | DX_76 | Email from “melissa.provost@wellsfargo.com” to Leland - RE: Notice of Non-Renewal and attachment |
| 78. | 10/29/2015 | DX_78 | Email from Greenberg to Pelissier and Stephen - RE: Draft: TransCare - Meeting Follow up |
| 79. | 12/11/2015 | DX_88 | Email from Tilton to Greenberg - RE: TransCare - Analysis of BBC Reporting of Unbilled Subsidy Revenue Amounts |

⁵ Defendants’ exhibits admitted at trial and designated by Defendants-Appellants are annexed hereto in Appendix Volume 2 (Parts 1–4).

| Designation No. | Document Date | Trial Exhibit No. | Description |
|------------------------|----------------------|--------------------------|--|
| 80. | 12/11/2015 | DX_89 | Email from Greenberg to Pelissier and Stephen - Re: Draft: TransCare – Today’s call with Wells Fargo |
| 81. | 12/16/2015 | DX_92 | Email from Tilton to Greenberg - RE: Transcare |
| 82. | 12/18/2015 | DX_96 | Email from Tilton to Greenberg - Re: Transcare |
| 83. | 12/21/2015 | DX_98 | Email from “Kurt.Marsden@wellsfargo.com” to Tilton - RE: Transcare |
| 84. | 12/30/2015 | DX_100 | Email from Greenberg to Tilton - TransCare - update on Wells Fargo discussions |
| 85. | 01/07/2016 | DX_106 | Carl Marks Advisory Group (“ <u>CMAG</u> ”) Consulting Agreement |
| 86. | 01/15/2016 | DX_112 | Email from Gerczak to Mercado |
| 87. | 01/29/2016 | DX_121 | Email from Tilton to Dudley |
| 88. | 02/04/2016 | DX_123 | Email from Tilton to Pelissier, Greenberg, Stephen, and Jones |
| 89. | 02/07/2016 | DX_127 | Email from Greenberg to Pelissier - TransCare with attachment |
| 90. | 02/09/2016 | DX_130 | Email from Tilton to “Kurt.Marsden@wellsfargo.com” - RE: Transcare |
| 91. | 02/10/2016 | DX_132 | Email from Killion to Greenberg - Article 9 Entities 2.10.16.xlsx and attachment |
| 92. | 02/10/2016 | DX_133 | Email from Masaya to Mercado and Stephen; copying “Accounting” - FW: TRANSCENDENCE TRANSIT II, INC. - Formation Documents with attachments |
| 93. | 02/12/2016 | DX_137 | Email from Giglio to Stephen - Re: Retainer |
| 94. | 02/12/2016 | DX_138 | Email from Giglio to Stephen - Re: Form of TSA |
| 95. | 02/17/2016 | DX_147 | Email from Lynn Tilton to “robert.strack@wellsfargo.com” - RE: 13 Week Cash Flow out of court (2).xlsx |
| 96. | 02/18/2016 | DX_150 | Email from Staggers to Tilton |
| 97. | 02/19/2016 | DX_151 | Email from Giglio to Tilton |
| 98. | 02/19/2016 | DX_157 | Email from Tilton to Forte and Strack - RE: Transcare |
| 99. | 02/20/2016 | DX_163 | Email from Greenberg to Tilton - RE: TransCare - question |
| 100. | 02/22/2016 | DX_166 | Email from Agrawal to Tilton - RE: TransCare - Updated NewCo Model with Paratransit, PA, and HV |

| Designation No. | Document Date | Trial Exhibit No. | Description |
|---|----------------------|--------------------------|---|
| 101. | 02/23/2016 | DX_171 | Email from Giglio to Tilton - RE: Wells Counter |
| 102. | 02/24/2016 | DX_174 | Letter to TransCare from PPAS Re: "Notice of Acceptance of Subject Collateral in Partial Satisfaction of Obligation" |
| 103. | 02/15/2016 | DX_195 | Email from Tilton to Giglio - re: TransCare Proposed DIP budget |
| Plaintiff's Exhibits⁶ | | | |
| 104. | 07/10/2012 | PX_3 | Authority Matrix - Transcare Corporation Written Consent of the Sole Director |
| 105. | 12/17/2015 | PX_132 | Email from Provost to Greenberg and Pelissier - TransCare Forbearance Terms Discussed |
| 106. | 01/07/2016 | PX_158 | Email from Greenberg to Landeck and Killion - TransCare - updates to 2016 preliminary plan based on yesterday's discussion |
| 107. | 01/14/2016 | PX_165 | Email from Pfefferle to Tilton -RE: Carl Marks Advisors Status Update |
| 108. | 01/15/2016 | PX_168 | Email from Greenberg to Dudley and Mercado |
| 109. | 01/15/2016 | PX_170 | Email from Fiorillo to Greenberg - RE: Transcare |
| 110. | 01/27/2016 | PX_175 | Email from Pfefferle to Killion, Greenberg, Pelissier, and Jones - Update Executive Summary for Lynn (pending additional updates including results of this mornings ST Barnaba meeting) |
| 111. | 01/27/2016 | PX_177 | Email from Greenberg to Pfefferle, Killion, and Landeck - Status of Wells Fargo discussions 01-16.pptx |
| 112. | 01/28/2016 | PX_179 | Email from Greenberg to Greenberg - Changes to cash flow forecast and business plan 01-28-16.pptx |
| 113. | 02/03/2016 | PX_185 | Email from Pfefferle to Greenberg - RE: Attachment to Funds Request 02-02-16.xlsx |
| 114. | 02/05/2016 | PX_191 | Memorandum from Wolf to Distribution- October 2015 Financials |
| 115. | 02/10/2016 | PX_193 | Email from CMAG to Greenberg |
| 116. | 02/10/2016 | PX_196 | Email from Greenberg to Arrowood, Ubbenga, Charles, Bolton, and Miles - TransCare - insurance information requested |
| 117. | 02/10/2016 | PX_197 | Email from Greenberg to Wolf - FW: Ark/Transcare Docs |

⁶ Plaintiff's exhibits admitted at trial and designated by Defendants-Appellants are annexed hereto in Appendix Volume 3 (Parts 1-4).

| Designation No. | Document Date | Trial Exhibit No. | Description |
|------------------------|----------------------|--------------------------|---|
| 118. | 02/12/2016 | PX_203 | Email from Peter Wolf to Michael Greenberg - RE: Transcare Direction Letters |
| 119. | 02/14/2016 | PX_206 | Email from Pelissier to Jones, Pothin, Greenberg, Wolf, Youngblood, Stephen, and Dell |
| 120. | 02/16/2016 | PX_209 | Email from Mercado to Fillebeen- Loan Daily Extracts-Transcare.xlsx |
| 121. | 02/19/2016 | PX_219 | Email from Strack to CMAG - RE: TransCare term sheet |
| 122. | 02/24/2016 | PX_227 | Email from Tilton to Giglio and Harrison |
| 123. | 02/24/2016 | PX_234 | Email from Tilton to Giglio, et al - RE: Board Meeting |
| 124. | 11/30/2018 | PX_282 | Expert Report of Jonathan I. Arnold, Ph.D. |
| 125. | 02/11/2019 | PX_283 | Expert Rebuttal Report of Jeffrey R. Dunn |
| 126. | 02/13/2016 | PX_286 | Email from Pelissier to Tilton |

4. Additional Designated Items⁷

| Designation No. | Document Date | Description |
|------------------------|----------------------|--|
| 127. | 07/23/2019 | Transcript prepared by A&A Court Reporting of the afternoon trial session held on July 23, 2019, which has been so-ordered as the official transcript of that trial session, per the <i>Memorandum Endorsed Order Signed on 9/9/2019</i> [ECF No. 131, Adv. Proc. No. 18-1021-smb] |

III. CERTIFICATE REGARDING TRANSCRIPTS

The transcripts of the trial proceedings before the Bankruptcy Court are included in the above designations of the appeal record. Therefore, pursuant to Rule 8009(b)(1)(B) of the Federal Rules of Bankruptcy Procedure, Defendants-Appellants hereby file this certificate stating that Defendants-Appellants are not ordering any transcripts.

⁷ These additional designated items are annexed hereto in Appendix Volume 4.

Dated: August 10, 2020
New York, New York

Respectfully submitted,

PROSKAUER ROSE LLP

By: /s/ Michael T. Mervis

Michael T. Mervis

Timothy Q. Karcher

Eleven Times Square

New York, NY 10036-8299

Tel.: (212) 969-3000

Fax: (212) 969-2900

Email: mmervis@proskauer.com

tkarcher@proskauer.com

Attorneys for Defendants-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August 2020, a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send a notice of such filing to the Chapter 7 Trustee's counsel and the interested parties registered to receive ECF notification from the court.

/s/ Michael T. Mervis
Michael T. Mervis